IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/02/2004

CORAM

THE HONOURABLE MRS. JUSTICE R.BANUMATHI

CRL.APPEAL No.829 of 1996

Suryakant V.Kanakia ... Appellant

-Vs-

V.Muthukumaran ... Respondent.

Criminal Appeal against the judgment dated 22.03.1993 made in C.C. No.9577 of 1992 on the file of V Metropolitan Magistrate, Egmore, Chennai-8.

!For appellant : Mr. Samir

^For respondent : Mr.S.Palaniappan

:J U D G M E N T

Complainant in C.C.No.9577 of 1991 is the Appellant.
Aggrieved over the order of acquittal of the Respondent / Accused under Sec.138 Negotiable Instruments Act by the V Metropolitan Magistrate, Egmore, Chennai (by judgment dated 22.03.1993), the Appellant / Complainant has preferred this appeal.

2. Relevant facts for disposal of this appeal could briefly be stated thus:- On 18.03.1991 the Accused has availed a loan of Rs.20,000/from the Complainant. He has agreed to repay the same with interest at the rate of 30% per annum. For repayment of the said amount, Accused had issued 11 cheques on various dates between May 1991 - August 1991 drawn on Standard Chartered Bank, N.S.C. Bose Road, Chennai. When the cheques were presented for collection in UCO Bank on 30 .08.1 991 by the Complainant, all cheques were dishonoured on 02.09.1991 with endorsement 'payments stopped by the drawer'. The Complainant sent a legal notice dated 05.09.1991. The Accused received the same on 09.09.1991. But he has not made arrangements to repay the loan. The Complainant has filed the complaint under Sec.138 Negotiable Instruments Act for nine cheques.

3. The Accused appeared before the trial Court. Copy of the complaint was served upon him and gist of charge was explained to him. On being questioned, the Accused denied the charge framed against him. To

substantiate the charge against the Accused, Suryakant V. Kanakia / Complainant was examined as P.W.1 and six documents were marked on the Complainant's side. The Accused was examined under Sec.313 Crl. P.C. about the incriminating evidence and circumstances. During questioning under Sec.313 Crl.P.C., he has stated that he had borrowed only Rs.10,000/- and he repaid the same and got back two cheques from the Complainant out of 11 cheques given by him to the Complainant. The Accused also stated that he had sent reply to the notice on 20.09.199 1. Further case of the Accused was that the Complainant deliberately did not return the documents pertaining to the loan.

4. Upon consideration of the evidence and the defence version, the learned Magistrate found that in view of Sec.219 Crl.P.C., filing of single case clubbing nine cheques is not maintainable, has acquitted the Accused under Sec.255(1) Crl.P.C d over the acquittal, Complainant has preferred this appeal.

5. The learned counsel for the Appellant / Complainant contended that the trial Court erred in applying Sec.219 Crl.P.C. to the proceedings under Sec.138 Negotiable Instruments Act and finding that more than three cheques cannot be clubbed together. Assailing the finding, learned counsel further submitted that the parties went on trial and the Accused was explained of the charge and also questioned under Sec.313 Crl.P.C. and when no prejudice was caused to the Accused, the trial Court erred in acquitting the Accused and urged for reversal of the acquittal.

6. Reiterating the findings of the trial Court, learned counsel for Respondent / Accused made his submissions on the nonmaintainability of the complaint and contended that more than three cheques cannot be filed in a single complaint and the learned Magistrate has rightly dismissed the same applying Sec.219 Crl.P.C.. On the amount payable by the Respondent/ Accused, it is submitted that a Civil Suit was already filed against the Respondent / Accused and in execution of the decree, E.P.No.1194 of 1997 is pending on the file of X Assistant Judge, City Civil Court in which Respondent / Accused has already paid Rs.52,000/- and in that view of the matter, order of acquittal is not to be reversed at this distant point of time.

7. Upon consideration of the submissions by both sides, judgment of the trial Court and other materials on record, the following points arise for consideration in this appeal:-
(i) Whether the trial Court was right in saying that dishonour of all the cheques cannot find a place in one complaint ?

(ii) whether Sec.219 Crl.P.C. is mandatory (particularly in respect of proceedings under Sec.138 Negotiable Instruments Act) and whether the trial Court was right in applying Sec.219 Crl.P.C. and acquitting the Accused ?

8. The appeal proceeds on these common grounds:- On

18.03.1991, the Accused has availed a loan of Rs.20,000/- from the Complainant agreeing to repay the same with an interest of 30% p.a. To repay the said amount, the Accused had issued cheques drawn on Standard Chartered Bank, N.S.C. Bose Road, Chennai on various dates as noted under...

01.05.1991 - Rs.1,300/-, 16.05.1991 - Rs.1,300/-,
01.06.1991 - Rs.1,300/-, 16.06.1991 - Rs.1,300/-,
01.17.1991 - Rs.1,300/-, 16.07.1991 - Rs.1,300/-,
25.07.1991 - Rs.7,000/-, 01.08.1991 - Rs.1,300/-,
16.08.1991 - Rs.1,300/- - Ex.A.1 series.
All the cheques were presented together for collection in UCO Bank, Purasaiwalkam Branch on 30.08.1991; all cheques were dishonoured on same day, i.e., on 02.09.1991 with endorsement 'payments stopped by the drawer'. After issuance of notice, the Complainant has filed the complaint relating to nine cheques. The Accused does not deny issuance of cheques. He only denies the borrowal of Rs.20,000/- but claims to have borrowed only Rs.10,000/-. According to the Accused, he repaid Rs.10,000/- and got back the two other cheques. Thus, the complaint is on the nine cheques.

9. In case, the drawer of the cheques fails to make the payment of the said amount within 15 days from the date of receipt of the notice, the holder can launch prosecution against the drawer within the next one month. No doubt, cause of action for each cheque is distinct and separate. But does it mean that all the instances of nine cheques presented together for collection cannot be clubbed in a complaint for dishonour ?

10. Section 219 Crl.P.C. contemplates joinder of charges.
Under Sec.219 Crl.P.C., when a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with and tried at one trial for, any number of them not exceeding three. It is not in dispute that the Respondent is accused of the same type of offences under Sec.138 Negotiable Instruments Act in respect of the aforesaid cheques. The cause of action accrued to the Complainant on a single day - Dishonour of all cheques together; issuance of single notice (Ex.A.3); and reply (Ex.A.4) and non payment of amount on all the cheques by the Respondent / Accused. Since the cause of action accrued at the same point of time, single complaint filed for nine cheques is legally maintainable.

11. The idea behind Sec.219 Crl.P.C. is to avoid multiplicity of proceedings in criminal matters. In fact the joinder of causes of action is permissible under Order II Rule 3 C.P.C. also. Of course, as per requirements of Sec.218 Crl.P.C. and Sec.219 Crl.P.C., it is desirable to file separate complaints. Since Sec.219 Crl.P.C. adverts to the procedural aspect, it is not the mandatory requirement under law. This is all the more so, in cases arising under Sec.138 Negotiable Instruments Act. Sec.219 Crl.P.C. incorporates a general rule and are not mandatory in proceedings under Sec.138 Negotiable Instruments Act. The cheques were issued within a gap of one or two months. They were presented together for collection and returned by the same endorsement. Considering the fact that a single notice was issued and no repayment is forthcoming, in my view, there is

nothing illegal in filing a single complaint nor does the trial is vitiated on account of the same. The reasonings of the trial Court that there is violation of Sec.219 Crl.P.C. and the acquittal of the Accused on that ground cannot be sustained.

12. Yet another reason could be pointed out that the trial Court ought not to have applied Sec.219 Crl.P.C. As said earlier, all the cheques were presented together on the single day i.e., on 30.08.1991 and all nine cheques were dishonoured on a single day with endorsement 'payments stopped by the drawer'. As such, each cheque will not give separate cause of action for two reasons-- (i) presentation together and (ii) same endorsement of return. Thus, the presentation of the cheques together, dishonour of all the nine cheques on a single day and issuance of single notice result in forming part of the same transaction.

13. Section 220 (1) of Cr.P.C. states that if one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for every such offence. In the present case though the giving of eleven cheques by the accused / petitioner to the complainant / respondent may be on different dates but all those acts of giving these cheques were merged together to form the same transaction viz., the presentation of these cheques together on one particular day as requested by the petitioner / accused herein. In otherwords even though different cheques were given on different dates, the presentation of all these cheques formed the same transaction. Further the Appellant also made the demand on the dishonouring of the cheques by issuing one lawyer's notice (Ex.A.3) and not several demands made for the payment of the dishonoured cheques. Held, therefore, that the petitioner / accused herein may be charged and tried at one trial for several such offences because the series of acts are so interlinked or inter-connected together so as to form the same transaction of dishonouring the cheques on a single day. Thus, single complaint lodged is well maintainable in cases where the cheques were issued within a period of one year and where there is single presentation of the cheques and dishonour of the cheques with the same endorsement in or about the same time and issuance of one single notice. In fact, such filing of single complaint prevents multiplicity of proceedings saving the time of the Court. It is advantageous not only to the Complainant but also to the Accused.

14. Parties went on trial and the Accused was explained of the charge and the Accused had not complained of any violation of provisions under Sec.219 Crl.P.C. during trial. This all the more so when the Respondent / Accused has not complained of any prejudice. As noted earlier, the Respondent / Accused was furnished with the copy of the complaint; gist of the charge was explained to him and the parties went on trial and the Accused was also questioned under Sec.313 Crl.P. C. But the Accused had not complained of any prejudice by clubbing of the cheques. On the maintainability of the complaint in view of Sec.2 19 Crl.P.C. Arguments were advanced only at the time of arguments. Sec.219 Crl.P.C. is not attracted to the facts of the present case for the simple reason that the Accused had not raised his objection at the earlier stage nor complained of prejudice during

trial. While so, the learned Magistrate erred in finding that there is violation of the provisions under Sec.219 Crl.P.C.

15. The Respondent / Accused had denied the borrowal of Rs.20,000/- and admitted the borrowal of only Rs.10,000/- and claimed discharge. The learned Magistrate has not considered that contention raised by the Accused. This Court is conscious of the fact that this is an appeal arising out of the acquittal, where the Court is to tread cautiously. But when there is misapplication of the provisions of the law resulting in substantial error and miscarriage of justice, High Court is empowered to interfere with the acquittal.

16. For the reasons stated above, the order of acquittal is to be set aside, directing retrial of the acquitted Respondent / Accused.

17. Therefore, the judgment of the V Metropolitan Magistrate in C. C.No.9577 of 1991 (dated 22.03.1993) acquitting the Accused is set aside. The matter is remitted back to the trial Court for fresh consideration. The trial Court is directed to afford opportunity to both parties in adducing additional evidence, if any and consider the matter afresh and dispose of the same in accordance with law. The trial Court is further directed to dispose of the matter within four months from the date of receipt of the records.

Index:yes
Internet: Yes

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To

1. The V Metropolitan Magistrate,
Egmore, Chennai.

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